

BEFORE THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

BEN SANSONE,)	
Plaintiff,)	
v.)	Case No. 17AC-CC00635
ERIC GREITENS in his official capacity)	
as the Governor of Missouri, et al.,)	
Defendants.)	

JUDGMENT

The Court takes up the competing Motions for Summary Judgment filed by the parties. Being duly advised in the premises, the Court enters its ruling.

The remaining issue for the Court is the propriety of the decision of the Governor's office in response to Plaintiff's request to not disclose "mobile phone numbers used by the governor (sic)" and is the substance of the remaining Count VI.

That information, "mobile phone numbers used by the governor (sic)," stored or retained by the Governor's office is without a question a public record as that term is used in § 610.010(6) RSMo as the Governor's office is a public governmental body and the requested numbers are in its possession. At issue is whether nor not the 610.021(14) exemption of "[r]ecords which are protected from disclosure by law." As this Court has ruled a number of times, this exemption in and of itself excludes nothing. There must be a reference to the law which prevents such disclosure. In the instant case, the defendant chose § 407.1500 RSMo, a novel approach heretofore not previously considered in the law.

It is significant that while the Governor's office applied this exception to any disclosure of any mobile phone numbers used by the governor, their argument is based upon a claim that this is a "personal" cell phone number¹ and not one issued by the government. Their policy

¹ No explanation is given as to what makes a cell phone number "personal."

applies only to “personal” cell phone numbers, suggesting that they would have disclosed a government cell phone number used by the Governor. There is conflicting testimony regarding whether or not the then Governor had a government issued cell phone.

This argument is central to their next argument that a personal cell phone number is “unique identification number” collected by a government body. That is the only way that § 407.1500(9) would apply. However, all this statute does is make one’s failure to provide notice of an “breach of security” or an “unauthorized” access or acquisition of a consumer’s personal information in a computerized form subject to an action for civil monetary penalties brought by the attorney general.

Said differently, § 407.1500 RSMo does not protect records from disclosure by law, it only create penalties for failing to give notice of disclosures under certain circumstances not present here. This exception does not apply. The cell phone numbers used by the governor, regardless of their governmental or personal nature, are public records.²

Having determined that these numbers are public records, the Court directs its attention as to the character of the refusal to provide them in response to Plaintiff’s Sunshine Law request.

Whether or not the cell phone numbers used by the governor were closed records was a question of first impression to the Governor’s office as well. It is clear from Ms. Madden’s deposition excerpts submitted in support of both parties’ Statements of Uncontested Material Facts that more than one legal counsel was involved, that similar conclusions were drawn by other agencies looking at disclosure of telephone numbers and the practice was to redact those numbers from their responses to various requests. It appears that this is the first time that the

² Virtually every policy argument made by the Governor’s office as to why these numbers should be closed holds merit. However, changes to the law are the province of the legislature.

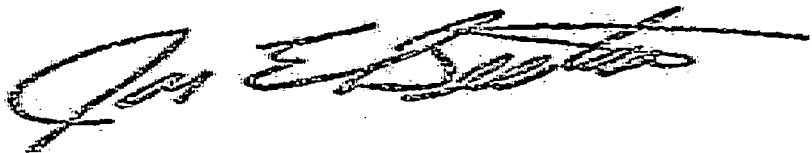
disclosure of the actual numbers themselves were requested.

The response promptly cited the asserted legal authority. That authority had been signed off on by a number of attorneys. However weak and hollow this Court finds this authority to be, asserting legal authority which had not been previously asserted, cannot be said to be a knowing violation of the Sunshine Law. In other words, looking for authority to not disclose information does not necessarily infer an intent to violate the law. The claim for attorneys' fees is denied.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. Plaintiff's Motion for Partial Summary Judgment is sustained on the issue of cell phone numbers used by the Governor as being public records subject to release;
2. Defendant's Motion for Summary Judgment on this issue of knowing and/or purposeful violation is sustained;
3. This Court's order of July 8, 2019 granting summary judgment in favor of Defendants as to Counts I, II, III, IV, VI and VII is incorporated by reference in the judgment;
4. All other claims for relief, not expressly granted herein are denied.

SO ORDERED this 31st day of December, 2020.

A handwritten signature in black ink, appearing to read "Jon E. Beetem", with a long horizontal flourish extending to the right.

Jon E. Beetem, Circuit Judge - Division I